IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.3635 of 2006

DATE OF DECISION: 8.8.2006

National Insurance Co.Ltd.

...Appellant

versus

Hawa Singh and others

... Respondents

CORAM:- Hon'ble Mr.Justice Uma Nath Singh.
Hon'ble Mr. Justice S.D.Anand.

Present: Mr.Suman Jain, Advocate,
for the appellant.

UMA NATH SINGH, J. (ORAL)

In this first appeal by the insurer, which arises out an award dated 25.4.2006 passed by learned Presiding Officer, Motor Accident Claims Tribunal, Jhajjar, in MACT Petition No.44 of 2003/2006, learned counsel submitted that the Insurance Company has been granted permission under Section 170 of the Motor Vehicles Act, 1988 (for short `the Act') to contest the claim. Accordingly, he urged that the injured-claimant should also have been held liable for contributory negligence, as he suffered the injuries on having alighted from the front door of the bus.

Learned counsel also submitted that a cousin of the claimant, namely, Rohtash (PW4), has appeared in the witness box, stating that he was an eye witness of the accident but, strangely enough, he did not carry the victim to the hospital immediately. Learned counsel also submitted that the Tribunal has brushed aside the evidence of the bus conductor only on the ground that the driver of the bus was not examined.

We have carefully considered all the three submissions in the light of the facts discussed in the award and we do not find any force therein. Admittedly, the accident took place when the claimant had alighted from the front door of the bus just to give way to other passengers, who were getting down and, thereafter, he was trying to get into the bus. The accident took place at that time, therefore, only the driver would have been in a position to tell the truth in evidence. Hence, the Tribunal has rightly not placed reliance on the evidence of the conductor in the absence of the driver being not examined. As regards contributory negligence, since the claimant was on the front door of the bus when the accident took place, he cannot be held to be a party to the negligence. Accordingly, we are not impressed by the submission. As regards the conduct of cousin of the claimant (PW4) at the time of accident, as reflected in his evidence, that itself would not be a

disqualification for dis-believing his statement.

Accordingly, FAO No.3635 of 2006, being devoid of merits, is, hereby, dismissed at the threshold.

(UMA NATH SINGH)
JUDGE

August 8, 2006
pk

(S.D.ANAND)
JUDGE